IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4809 OF 2005

Shri.Arshad Sharif Khan
and Ors. ..Applicants

Vs.

State of Maharashtra ..Respondent

...
Mr.S.V.Marwadi, Advocate for Applicants
Mr.S.R.Shinde, A.P.P. for the State
...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPT. 1,2005

P.C.

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State.

2. The applicants are seeking anticipatory bail in C.R.No. I-225 of 2005 of Thane Nagar Police Station. The said case is under Sections 395, 392, 448, 341 and 506-II r.w. 34 of IPC.

3. It is the case of the prosecution that applicants along with others entered into the house

of the complainant and took away certain articles. As far as applicant no.3 is concerned, the complainant has specifically stated in his complaint that one of the said persons was the son of Akhtar Bape. Thus, on reading the complaint, it is clear that complainant has named applicant no.3 in his complaint.

4. As far as applicant nos.1 and 2 are concerned, they have been identified by the complainant in the test identification parade. The learned A.P.P. has pointed out that the complainant in his further statement recorded on 16.7.2005, has also implicated applicant nos.1 and 2. In the said statement, the complainant has given reason as to why he had not named the applicants nos.1 and 2 in his complaint dated 14.7.2005. Mr.Marwadi has submitted that all the applicants and complainant being residents of the same area, the complainant could very well have given the names of all the applicants in his complaint, had the applicants really been involved in the crime. He has submitted that the very fact that their names had been taken belatedly by the complainant on

16.7.2005 shows that they have been falsely implicated on account of several disputes between the parties.

5. It is true that the complainant has referred to the applicants nos.1 and 2 for the first time in his statement dated 16.7.2005. However, he has stated the reason as to why the names of these persons were not given in his complaint. As far as applicant no.3 is concerned, the complainant implicates him in his complaint.

6. In the present case, it is seen that investigation is going on. In my view, the material collected by the prosecution is such as to point out an accusing finger towards the present applicant. The Apex Court has observed in the decision of **Directorate of Enforcement Vs. P.V.Prabhakar Rao** reported in **1997 SCC (Cri.) 978,** that when the material gathered by the prosecution is such as to point out an accusing finger towards the accused, it is not a fit case to grant anticipatory bail.

7. One other factor in this case is that the identification in respect of applicants took place on 23.8.2005. On the said date, the accused persons pressurised the complainant Mohammad Chand Shaikh Akhtar Abdul Kadar Bape and his nephew Imran Shaikh who is a witness in the present case not to attend the identification parade. However, despite the threats, the complainant and Imran Shaikh attended the identification parade and both these witnesses identified the applicants. As stated earlier, the investigation in the present case is going on. If the applicants are granted anticipatory bail, they would remain out and pressurise the witnesses due to which, there would be impediment in the investigation. In view of all these facts, I do not think that this is a fit case to grant anticipatory bail. Application is rejected.

8. In the event the applicants prefer an application for bail, the said bail application to be decided without being influenced by any observations in this order.

9. At this stage, Mr.Marwadi prays that the applicants may be given sometime to surrender. The applicants are granted time upto 15.9.2005 to surrender. The applicants will surrender before the Investigation Officer i.e. Police Inspector attached to Thane Nagar Police Station on 15.9.2005 at 11.00 a.m. It is clarified that in the meantime, the applicants shall report to the concerned Police Station upto 14.9.2005 as and when required.

[V.K.TAHILRAMANI,J.]